

file

BEFORE THE  
STATE OF WISCONSIN  
Division Of Hearings And Appeals



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In the Matter of Whether Lands Owned by Paul  
Nelson (Nel-Farm, Inc.), Located in the Town of  
Sugar Creek, Walworth County, Wisconsin, Shall  
Continue Under the Woodland Tax Law

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Case No. IH-97-05

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

On November 20, 1996, the Department of Natural Resources issued Woodland Tax Law Declassification Order #5392 to Nel-Farm, Inc., and ordered that the subject parcel be withdrawn from designation as Woodland Tax Land. By letter dated December 9, 1996, Nel-Farm, Inc., requested a hearing to review the declassification order. On August 15, 1997, the Department of Natural Resources forwarded the file to the Division of Hearings and Appeals for hearing. Pursuant to due notice, a hearing was held on October 6, 1997, in Elkhorn, Wisconsin, before Mark J. Kaiser, Administrative Law Judge.

In accordance with secs. 227.47 and 227.53(1)(c), Stats., the PARTIES to this proceeding are certified as follows:

Wisconsin Department of Natural Resources, by

James S. Christenson, Attorney  
P. O. Box 7921  
Madison, Wisconsin 53707-7921

Nel-Farm, Inc., by

Paul Nelson, president  
W6119 Hazelridge Road  
Elkhorn, Wisconsin 53121

## FINDINGS OF FACT

1. Nel-Farm, Inc., owns a twelve-acre parcel in the Town of Sugar Creek, Walworth County. The legal description of the parcel is part of the NESW of Section 34, Township 3 North, Range 16 East, Town of Sugar Creek, Walworth County.

2. The previous owner of the parcel, Emma Stiles Estate, applied to have the parcel designated as Woodland Tax Land pursuant to sec. 77.16, Stats. By order of entry dated February 26, 1965, the parcel was designated Woodland Tax Land. The parcel was subsequently purchased by Nel-Farm, Inc. Nel-Farm, Inc., renewed the Woodland Tax Land designation in February, 1975 and November, 1984.

3. In August, 1984, Nel-Farm, Inc., executed a Woodland Tax Law Management Plan approved by the Department of Natural Resources (Department). The management plan required Nel-Farm, Inc., to "[c]omplete a shelterwood harvest in the oak stand by the year 1990."

4. In 1991, the parcel was marked for a shelterwood harvest by a Department forester. The forester marked the trees which must be removed. A timber sale notice for the parcel was then prepared and sent to potential timber buyers. One timber buyer, Beierle Sawmill, submitted a bid of \$1500 for the marked trees. Nel-Farm, Inc., rejected the bid and the shelterwood harvest was not completed at that time.

5. On October 25, 1993, the Department issued a Notice of Investigation to Nel-Farm, Inc. The Notice of Investigation set a deadline of November 25, 1993, to show intent to complete the required shelterwood harvest.

6. On September 13, 1994, Nel-Farm, Inc., entered into a timber buying contract with Wally Benzing of Benzing Forest Products. Benzing Forest Products agreed to buy the trees on the parcel with a diameter of sixteen inches or greater for \$2500. Mr. Benzing told Paul Nelson that he could pay more for the timber if he cut more than just the marked trees. Mr. Benzing also told Mr. Nelson that it would be all right with the Department if unmarked trees were taken.

7. In February, 1995, Benzing Forest Products removed every tree on the parcel which was large enough to make a sawlog (a commercial clear cut) This involved removing many trees which had not been marked by the Department for harvesting. The commercial clear cut violated the management plan for this parcel.

8. The Department worked out an agreement with Nel-Farm, Inc., whereby Paul Nelson would plant 3000 trees on the parcel to repair the damage from the commercial clear cut. Mr. Nelson attempted to comply with this agreement but determined it was not financially feasible to plant 3000 trees on the parcel.

9. Paul Nelson and Nel-Farm, Inc., were apparently victims of an unscrupulous timber buyer. However, the fact remains that the management plan was violated and, as the

landowner, Nel-Farm, Inc., is responsible. The parcel must be withdrawn from designation as Woodland Tax Law Land.

10. On November 20, 1996, the Department issued Woodland Tax Law Declassification Order #5392 to Nel-Farm, Inc., withdrawing the subject parcel from designation as Woodland Tax Law Land.

#### CONCLUSIONS OF LAW

1. The commercial clear cut of the subject parcel violated the Woodland Tax Law Management Plan approved for this parcel. Pursuant to sec. 77.16(7), Stats., if the Department finds that a landowner has not followed the management plan, the Department shall issue an order removing the land from the Woodland Tax Law classification.

2. Pursuant to sec. 227.43(1)(b), Stats., the Division of Hearings and Appeals has authority to hear contested cases and enter necessary orders relating to the declassification of Woodland Tax Law Land.

#### ORDER

IT IS HEREBY ORDERED that Woodland Tax Law Declassification Order #5392 issued to Nel-Farm, Inc., on November 20, 1996, is affirmed.

IT IS FURTHER ORDERED that a copy of this order shall be transmitted by the Department of Natural Resources to the supervisor of equalization of the district wherein the land is located, to the clerk and assessor of the Town of Sugar Creek, and to the clerk and register of deeds of Walworth County.

Dated at Madison, Wisconsin on October 16, 1997.

STATE OF WISCONSIN  
DIVISION OF HEARINGS AND APPEALS  
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Madison, Wisconsin 53705  
Telephone: (608) 266-7709  
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By Mark J. Kaiser  
MARK J. KAISER  
ADMINISTRATIVE LAW JUDGE

## NOTICE

Set out below is a list of alternative methods available to persons who may desire to obtain review of the attached decision of the Administrative Law Judge. This notice is provided to insure compliance with sec. 227.48, Stats., and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision.

1 Any party to this proceeding adversely affected by the decision attached hereto has the right within twenty (20) days after entry of the decision, to petition the secretary of the Department of Natural Resources for review of the decision as provided by Wisconsin Administrative Code NR 2.20. A petition for review under this section is not a prerequisite for judicial review under secs. 227.52 and 227.53, Stats.

2. Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Department of Natural Resources a written petition for rehearing pursuant to sec. 227.49, Stats. Rehearing may only be granted for those reasons set out in sec. 227.49(3), Stats. A petition under this section is not a prerequisite for judicial review under secs. 227.52 and 227.53, Stats.

3 Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefor in accordance with the provisions of sec. 227.52 and 227.53, Stats. Said petition must be filed within thirty (30) days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (2) above, any party seeking judicial review shall serve and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Since the decision of the Administrative Law Judge in the attached order is by law a decision of the Department of Natural Resources, any petition for judicial review shall name the Department of Natural Resources as the respondent. Persons desiring to file for judicial review are advised to closely examine all provisions of secs. 227.52 and 227.53, Stats., to insure strict compliance with all its requirements.